



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TJR
Docket No: 4071-00
1 December 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL OF RECORD EX-AR [REDACTED] USN,
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting that the characterization of his discharge be changed.

2. The Board, consisting of Messrs. Leeman, McPartlin, and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 28 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 30 December 1980 after three years of prior honorable service in the U. S. Army.

d. Petitioner served for nearly three years without disciplinary incident. However, on 2 December 1983, Petitioner was convicted by special court-martial (SPCM) of assault and communicating a threat. He was sentenced to confinement at hard labor for three months, a \$1,146 forfeiture of pay, reduction to paygrade E-1, and a bad conduct discharge (BCD). After trial,

the military judge recommended clemency be granted and stated, in part, as follows:

....the offenses appeared to be out of character for the accused and recommended that the accused be monitored closely. If the accused demonstrated that he realized the danger and gravity of his actions, he recommended that reviewing authorities consider suspending the accused bad conduct discharge.

e. Subsequently, the BCD was approved at all levels of review and ordered executed. On 26 June 1985 Petitioner received a BCD.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board's finding is based on Petitioner's prior honorable service in the U. S. Army, three years of good Naval Service, and the clemency recommendation of the military judge during his SPCM. The Board notes Petitioner's misconduct and does not in any way condone his actions, but notes that his disciplinary infractions, although serious, were isolated incidents. Given the recommendation of the military judge, it appears there were mitigating factors. Accordingly, the Board concludes that no useful purpose is served by continuing to characterize Petitioner's service as having been under other than honorable conditions, and recharacterization to a general discharge is appropriate. Accordingly, the Board concludes that relief in the form of recharacterization of Petitioner's discharge is appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 26 June 1985 vice the BCD actually issued on that same day.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 12 June 2000.

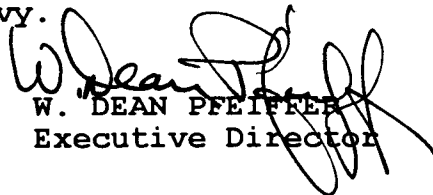
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director